

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEFFREY VINCENT ZINGELEWICZ,)
Plaintiff,)
v.) C.A. No. 12-286 Erie
MICHAEL J. ASRUE,)
Defendant.)

AMBROSE, Senior District Judge

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on November 15, 2012, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on January 6, 2013, recommended that the Commissioner's Motion for Summary Judgment (ECF No. 11) be denied, that Plaintiff's Motion for Summary Judgment (ECF No. 8) be denied to the extent that he requests an award of benefits but granted to the extent he seeks a vacatur of the Commissioner's decision, and a remand for further proceedings. It is further recommended that the Commissioner's decision be vacated, and that the case be remanded for further consideration of Plaintiff's application for benefits. The Commissioner should be directed to "reopen and fully develop the record before rendering a ruling" on Plaintiff's claim. *Thomas v. Comm'r of Soc. Sec.*, 625 F.3d 798, 800 (3d Cir. 2010). The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff and Defendant by NEF. No objections were filed. After de novo review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 29th day of January, 2014, it is ordered that that the Commissioner's Motion for Summary Judgment (ECF No. 11) is DENIED. The Plaintiff's Motion for Summary Judgment (ECF No. 8) is DENIED to the extent that he requests an award of benefits but GRANTED to the extent he seeks a vacatur of the Commissioner's decision, and a remand for further proceedings. It is further ORDERED that the Commissioner's decision is vacated, and that the case is remanded for further consideration of Plaintiff's application for benefits. The Commissioner is directed to "reopen and fully develop the record before rendering a ruling" on Plaintiff's claim. *Thomas v. Comm'r of Soc. Sec.*, 625 F.3d 798, 800 (3d Cir. 2010).

The report and recommendation of Magistrate Judge Baxter, dated January 6, 2014, is adopted as the opinion of the court.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge